

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT**

ENTERGY NUCLEAR VERMONT YANKEE, LLC
and ENTERGY NUCLEAR OPERATIONS, INC.

Plaintiffs,

v.

PETER SHUMLIN, in his official capacity as
GOVERNOR OF THE STATE OF VERMONT;
WILLIAM H. SORRELL, as ATTORNEY GENERAL
OF THE STATE OF VERMONT; and JAMES VOLZ,
JOHN BURKE, and DAVID COEN, in their official
capacities as members of THE VERMONT PUBLIC
SERVICE BOARD

Defendants.

Civil Action No. 11-cv-99

**DEFENDANTS' RESPONSE
TO PLAINTIFFS' MARCH 1, 2012 LETTER (ECF DOC. 196)**

On March 1, 2012, Entergy filed a letter to the Court asking the Court to indicate, by countersigning the letter, that the Court intends to grant Entergy's Rule 60(b) motion or that the motion raises substantial issues warranting a remand of the case from the Second Circuit. ECF Doc. 196. This unusual request by letter¹ is not consistent with the governing procedural rules and would cut off defendants' opportunity to respond to Entergy's motion. Defendants ask the Court to decline to sign the March 1 letter and to allow defendants to file an expedited opposition to Entergy's Rule 60(b) motion on or before March 8.

Entergy's Rule 60(b) filings have not complied with the procedure set forth in Fed. R. Civ. P. 62.1 and Fed. R. App. P. 12.1. Entergy simultaneously filed its Rule 60(b) motion in this Court and a motion to remand in the Second Circuit. As defendants have argued in a recent filing to the Second Circuit (ECF Doc. 28 in Case No. 12-707), Entergy's motion to remand was not

¹ Entergy's letter does not comply with Fed. R. Civ. P. 7(b), which provides that a request for a court order "must be made by motion." *See also* Local Rule 7 (requirements for motion filing).

proper because this Court had not yet addressed the Rule 60(b) motion. A remand is possible only *after* this Court has considered the matter and concluded either that it would grant the motion or that the motion raises a “substantial issue.” Fed. R. App. P. 12.1(b); *see, e.g., Ryan v. United States Lines Co.*, 303 F.2d 430, 434 (2d Cir. 1962).

Entergy now recognizes that Rule 12.1 applies, but seeks to shortcircuit the process by asking the Court to state its views on Entergy’s motion before defendants have an opportunity to respond. Nothing in the governing rules suggests that the Court should enter its indicative ruling on the motion without hearing from the opposing party. And Entergy has not identified any circumstances that warrant such an extraordinary step. Entergy has not, for example, explained why – if it views the Court’s judgment as mistaken – Entergy did not file a timely motion to alter or amend the judgment under Fed. R. Civ. P. 59(e). And Entergy’s request for relief under Rule 60(b) and its motion for an injunction pending appeal are both premised on nothing more than a request for briefing from the Vermont Public Service Board. The Board, moreover, recently denied Entergy’s request that the Board stay its process for briefing and answering those questions. *See* Attach. A. Briefs on the questions are now due on March 7; the Board is holding a hearing on March 9.

The State has a substantial interest in prompt appellate review, and Entergy’s request for an indicative ruling and a remand by the Second Circuit will delay that review. Defendants’ response will show that Entergy’s Rule 60(b) motion does not raise a substantial issue that warrants a remand for further proceedings. For these reasons, defendants ask the Court not to act on Entergy’s request for an indicative ruling at this time and to allow defendants to file an expedited response to Entergy’s motions on or before March 8, 2012.

CONCLUSION

The Court should not act on plaintiffs' letter request of March 1, 2012, and should allow defendants to respond to plaintiffs' Rule 60(b) motion on an expedited basis, on or before March 8, 2012.

Dated: March 2, 2012

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CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of March 2012, I electronically filed the above document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following: Robert B. Hemley, Matthew B. Byrne, Kathleen M. Sullivan, Faith Gay, Robert C. Juman, Sanford I. Weisburst, and William B. Adams.

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